HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.11769 of 1996

Between:

K.Ramachandra Raju … Petitioner

AND

Commissioner of Land Revenue,
Andhra Pradesh, Hyderabad and others. … Respondents.

:: O R D E R ::

Counsel for the petitioners : Smt.P.Sarada
for Sri P. Krishna Reddy

Counsel for respondent Nos.1 to 4 : Government Pleader for Revenue.

Counsel for respondent No.5 : Sri M.P.Chandramouli

28th June, 2006

This is a petition for quashing order dated 22-4-1996 passed by Special Commissioner, Land Revenue, Andhra Pradesh in proceedings No.BCW3/1650/94 dated 22-4-1996, whereby he allowed the appeal preferred by respondent No.5 - Nanabala Venkata Subbamma and set aside orders dated 19-7-1993 and 23-9-1994 passed by Mandal Revenue Officer, Ozili Mandal, Nellore District (respondent No.4) and District Collector, Nellore (respondent No.2) respectively, and directed that necessary revised entries may be made in the revenue records as per the old pattas.

The Facts:

1) Sri Nanabala Audeppa Setty (husband of respondent No.5), who was cultivating Ac.4.66 cents of land in Survey No.24/3 of Chillamanchenu Village since 1957, was assigned the said land and granted patta on 22-11-1961. After six years and about five months, Sri K.Venkata Raju (father of the petitioner), who was cultivating land measuring Ac.1.36 cents in Survey No.25/2 was issued patta by Tahsildar, Venkatagiri vide his order dated 24-4-1968.

2) In February/March, 1993, the petitioner made an application to Joint Collector, Nellore for issue of revised patta in respect of land measuring Ac.3.00 by claiming that his father and husband of respondent No.5 were jointly cultivating Ac.6.00 of land; that they were jointly assigned the land in question, though Ac.4.60 cents was recorded in the name of Sri Audeppa Setty and Ac.1.40 cents was recorded in the name of his father; that the land has been kept waste for the last 30 years, and that even though the first son of Sri Audeppa Setty is not residing in the village for the last seven years and the second son is working as teacher in ZPP High School, Naidupet, they were not allowing him to cultivate half of the land. He prayed that the old pattas may be cancelled and fresh patta may be issued in his favour in respect of Ac.3.00 land.

3) The application of the petitioner was forwarded by Joint Collector, Nellore to respondent No.4 for necessary enquiry. The latter issued notice to the heirs of Nalabala Audeppa Setty. Respondent No.5 sent a reply through registered post. She denied the assertion contained in the application filed by the petitioner. She averred that land measuring Ac.4.66 cents was in the possession of her husband since 12-10-1957; that her husband was a landless poor, and that D-Form patta was issued in his favour on 22-11-1961 in respect of Ac.4.66 cents of land in Survey No.24/3, whereas similar patta was issued in favour of the petitioner's father on 24-4-1968 in respect of only Ac.1.38 cents comprised in Survey No.25/2.

4) After receipt of the reply of respondent No.5, respondent No.4

straightaway passed order dated 19-7-1993, whereby he revised the assignment in the following terms:

1. Sri N.Audeaiah (Audeppa Setty)- Survey No.24/3 part Ac.3.02 cents out of Ac.4.66 cents.

2. Sri K.Venkata Raju – Survey No.24/3 - Ac.1.64 cents
Survey No.25/2 - Ac.1.38 cents

Ac.3.02 cents

5) The appeal preferred by respondent No.5 against the above mentioned order was dismissed by respondent No.2, who mainly relied on some entries made in the adangal and observed:

> "The pattadar pass book issued by the then Tahsildar, Naidupet indicates that Sri Konduru Venkata Raju possesses Acs.1.64 cents in S.No.24/2 and Ac.1.38 cts. in S.No.25/2 of Chilamanchenu Village. Adangal extracts also support the claim of respondent. As per the records, Sri Nanabala Audaiah Setty has cultivated only Ac.3.02 in S.No.24/2 and the remaining Ac.1.64 was cultivated by Sri Konduru Venkata Raju, who is a landless poor, along with Ac.1.38 in S.No.25/2 o f Chilamanchenu Village. The two assignees have jointly cultivated the above land assigned to them. It is observed that after the death of the original assignees, a dispute had surfaced between the legal heirs. According to assignment policy, the land should be assigned to those landless poor persons who directly engage themselves in cultivation. In the instant case, Sri Audaiah Sestty cultivated only Ac.3.02 in S.No.24/2 and Sri K.Venkataraju cultivated Ac.1.64 in S.No.24/2 and Ac.1.38 in S.No.25/2 of Chilamanchenu Village. Hence, I find no reason to interfere with the order of the Mandal Revenue Officer, Ozili issued in his proceedings No.B.612/93, dt.19.7.1993. In the result, the appeal is dismissed."

6) Respondent No.5 challenged the appellate order by filing revision, which was disposed of by respondent No.1 vide his order dated 22-4-1996. Respondent No.1 noted that D-Form patta was issued in favour of the petitioner's father after almost seven years of issue of similar patta in favour of the husband of

respondent No.5; that cist receipts of eight years available in the file show that the pattadars had paid the cist separately; that there is no evidence of joint cultivation; if the land had been kept vacant for ten years as found by respondent No.4, where was the question of joint cultivation, and that enquiry was conducted by respondent No.4 without giving notice to the revision petitioner (respondent No.5 herein). For better appreciation of the petitioner's challenge to the revisional order, the relevant portion of that order is extracted below:

> "Perused the connected records. The records available show that the patta was issued to the husband of the present revision petitioner in the year 1961 for Ac.4.66 cents. The patta was issued for 1.34 acres to father of the present respondent No.3 in the year 1968. Cist receipts of 8 years which is available in the file shows that cist has been paid by the respective pattedar for the extent of land assigned. It also shows in the year 1967 the revision petitioner's husband has paid cist for the land which was under his occupation. There is no evidence on the record to show that lands were jointly cultivated. It is also admitted in the Mandal Revenue Officer's order that the land was kept vacant for more than 10 years. If the land was kept vacant for more than 10 years where is the question of jointly cultivating? It is further seen that enquiry was conducted by the Mandal Revenue Officer without notice being given to the present revision petitioner in 1993 and she was not present during the enquiry. The Mandal Revenue Officer states that the enquiry was conducted with the elders present in the village. However, enquiry conducted behind the person affected and without any basis on record is no proper enquiry. In the case it is admitted that the land was fallow for more than 10 years before 1993. The records before 1980s and late 70s show that the pattedar was paying cist for the extent of the land assigned. In the light of the above facts, it is very difficult to take a view that the land was jointly cultivated, in equal share of 3.00 acres. The orders of the Joint Collector and the Mandal Revenue Officer are set aside. The appeal is allowed. Necessary revised entries may be made in the revenue records as per the old pattas issued and a revised patta may be issued."

Smt.P.Sarada, learned counsel for the petitioner argued that

even though separate pattas were issued in favour of the petitioner's father and the husband of respondent No.5, as a matter of fact, both had jointly cultivated the land and this was sufficient for issue of fresh pattas. She further argued that the entries made in adangal showing joint cultivation of land by the assignees were rightly relied by respondent No. 2 for holding that they were having joint possession warranting issue of separate pattas for equal share of land.

Learned Government Pleader and counsel for respondent No.5 supported the order under challenge and argued that the findings recorded by respondent No.1, which are based on correct appreciation of the material placed on record, do not call for interference by this Court under Article 226 of the Constitution of India. Sri M.P. Chandramouli submitted that the time gap of six years and five months between the assignment of land to the husband of respondent No.5 and the father of the petitioner is, by itself, sufficient to discard the theory of joint cultivation and respondent No.1 did not commit any illegality by discarding the case set up by the petitioner.

I have considered the respective submissions. At the outset, I consider it proper to mention that the prayer made by the petitioner, if accepted, would warrant issue of a writ of certiorari to quash the order passed by respondent No.1, which would necessarily result in restoration of orders passed by respondent Nos.2 and 4 respectively. Therefore, it is apposite to notice the scope of this Court's power to issue a writ of certiorari.

A writ of certiorari can be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or

Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion. In **Syed Yakoob v. K.S. Radhakrishnan**[1], the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> "i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. "

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[2]

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3]**,** their Lordships of the Supreme Court, while considering the High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others**[4]**,** the Supreme Court considered the correctness of an order passed by the High Court whereby the appellant's writ petition against his removal from the office of the President of Municipal Council, Nangal was dismissed. The Supreme Court confirmed the order passed by the High Court and observed:

"The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is

insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[5], the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

"i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical

character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circum-stances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to inter-vene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.”

In the light of the law laid down in the above mentioned judgments, I shall now consider whether there is any substance in the petitioner's challenge to the order passed by respondent No.1. A careful scrutiny of the record shows that the application filed by the petitioner for issue of fresh patta was entirely founded on his assertion that the husband of respondent No.5 and his father were jointly cultivating Ac.6.00 of land and this was evinced from the entries made in the adangal. Joint Collector, Nellore, to whom the application was addressed, forwarded the same to respondent No.4 for making enquiry. The latter did take notice of the fact there was a time gap of more than six years between the assignment made in favour of the husband of respondent No.5 and the father of the petitioner, but accepted the latter's claim for issue of fresh patta by relying on personal enquiry made from some villagers, who are reported to have stated that the original assignees had cultivated the land jointly in equal shares. On his part, respondent No.2 relied on some extracts of the adangal and straightaway jumped to the conclusion that the two assignees had jointly cultivated the land. Unfortunately, neither of them paid attention to the unequivocal assertion made by respondent No.5 that her husband was in possession of Ac.4.66 cents of land in Survey No.24/3 since 1957, that the same was assigned to him because he fell in the category of landless poor, and that the land was assigned to the petitioner's father in a different survey number after a gap of more than six years. This aspect has been highlighted in the order of respondent No.1, who also took cognizance of the cist receipts of eight years, which revealed that the assignees had separately paid cist. Respondent No.1 also discarded the theory of joint cultivation by observing that as per the petitioner's own showing, the land was kept vacant for more than ten years.

In my opinion, the orders passed by respondent Nos.4 and 2 respectively, were largely founded on conjectures and surmises and not on any tangible evidence. Both the officers omitted to consider the

most crucial issue i.e. assignment of land to the father of the petitioner after six years and five months of the assignment of land to the husband of respondent No.5 and the fact that both had separately paid the cist. Not only this, respondent No.4 committed a grave illegality by relying on the personal enquiries made by him from the villagers without giving notice to respondent No.5 so as to enable her to remain present at such enquiry. As against this, respondent No.1 has assigned cogent reasons for holding that the lands were separately assigned to the husband of respondent No.5 and the father of the petitioner and the theory of joint cultivation was untenable. In my view, the reasons assigned by respondent No.1 for setting aside the orders made by respondent Nos.2 and 4 are rational, plausible and logical. Therefore, there is no justification, legal or otherwise, for upsetting the order passed by the said respondent. This Court cannot sit in appeal over the findings recorded by respondent No.1 and nullify the order under challenge merely because on a re-appreciation of the evidence, there is a remote possibility of taking a different view.

In the premise aforesaid, I hold that the petitioner has failed to make out a case for judicial review of order dated 22-4-1996 passed by respondent No.1 and the writ petition is liable to be dismissed. Ordered accordingly. However, the parties are left to bear their own costs.

As a sequel to dismissal of the writ petition, WPMP.No.14311 of 1996 filed by the petitioner is also dismissed and interim order dated 1-7-1996 is vacated.

G.S.SINGHVI, C.J.

28th June, 2006.

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[1] AIR 1964 SC 477

[2] JT 2002 (8) SC 69 = (2002) 9 SCC 375

[3] AIR 1970 SC 61

[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[5] AIR 2003 SC 3044